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## WISCONSIN LEGISLATIVE COUNCIL

### AMENDMENT MEMO

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<b>2001 Assembly Bill 216</b>	<b>Assembly Amendment 1</b>
Memo published: January 23, 2002	
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Under current law, if a person is arrested for driving or operating a motor vehicle while under the influence (OWI) of an intoxicant, a law enforcement officer may request the person to take a test to determine the amount of alcohol in his or her blood or breath. The law enforcement officer may request the test prior to arrest if a person is suspected of OWI. If the person refuses to take the test, the officer takes possession of the person's driver's license and prepares a notice of intent to revoke the person's operating privilege. The notice informs the person of a number of items, including the right to request a court hearing to contest the revocation. The Wisconsin Court of Appeals, in *State v. Schoepp*, 204 Wis. 2d 266 (1996), held that a person who receives a notice of intent to revoke the person's operating privilege may utilize the full range of discovery procedures under state law before the hearing, including the use of depositions and interrogatories.

2001 Assembly Bill 216 prohibits either parties' use of discovery in these types of cases, except that at the hearing, before a witness testifies, the person who refuses to take the test has the right to receive a copy of any written or voice recorded statement of the witness. The bill allows the court, for cause, to order the production of those statements before the hearing.

Assembly Amendment 1 would change the type of prehearing discovery permitted under this provision. Under the amendment, prehearing discovery may be made only under the following circumstances:

1. If the person who refused to take the test brings a motion within 10 days after the alleged refusal and shows cause therefore, the court may order that the defendant be allowed to inspect and test under s. 804.09, Stats., and under such conditions as the court prescribes, any devices used by the officer to determine whether a violation or refusal has been committed. This would include, without limitation, devices used to determine presence of alcohol in breath, blood, or urine. The defendant would also be permitted to inspect the reports of experts relating to those devices.

2. At the “refusal to take a test” hearing, before a witness testifies, written or voice recorded statements of the witness, if any, must be given to the person who refused to take the test. For cause, the court may order the production of those statements before the hearing.

Assembly Amendment 1 to 2001 Assembly Bill 216, relating to the right to discovery and implied consent cases involving drunk driving. This amendment was adopted by the Assembly Highway Safety Committee on a vote of Ayes, 6; Noes, 0. The bill, as amended, was recommended for passage on a vote of Ayes, 5; Noes, 1.

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